

SERVICE DATE – FEBRUARY 22, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35714

PUGET SOUND & PACIFIC RAILROAD COMPANY—LEASE EXEMPTION—
THE UNITED STATES OF AMERICA

[REQUEST FOR WAIVER OF 49 C.F.R. § 1150.42(e)]

Digest:¹ Puget Sound & Pacific Railroad Company has notified the Board that it intends to lease from the United States Navy (the Navy), and to operate, 48.6 miles of rail line in Kitsap and Mason Counties, Wash. This decision allows the railroad to do so without giving potentially affected employees the full 60-day advance notice of the transaction that ordinarily would be required under the Board's regulations.

Decided: February 20, 2013

On January 29, 2013, Puget Sound & Pacific Railroad Company (PSAP), filed a request for a waiver of the requirements of 49 C.F.R. § 1150.42(e), which requires that, in certain railroad acquisition or operation proceedings, the applicant must give 60 days advance notice of the transaction to potentially affected employees and to the national offices of the potentially affected employees' labor unions. Because PSAP has been, and will continue to be, the exclusive freight rail operator over the 48.6-mile line of railroad, PSAP seeks a waiver so that the lease and operation it seeks to effectuate by exemption can become effective without PSAP's providing the full 60-day advance notice.

BACKGROUND

Concurrently with the filing of the petition for waiver, PSAP, a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. § 1150.41 to lease from the United States Navy (the Navy), and to operate, pursuant to a lease agreement dated January 16, 2013, a 44-mile line of railroad between Shelton and Bangor, Wash., and a 4.6-mile line to the Bremerton Navy Yard, in Kitsap and Mason Counties, Wash., a total distance of approximately 48.6 miles (the Line).

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

According to PSAP, there are no mileposts on the Line. PSAP states that the lease agreement replaces an agreement dated December 11, 1944, between the Navy and the Northern Pacific Railway Company (Northern Pacific)² that covers the operations of the Line (operating agreement). PSAP points out that, under the operating agreement, it currently provides service on the Line,³ and will continue to provide the same common carrier service under the lease agreement. PSAP states that it, or its predecessors, has been the exclusive freight operator over the Line since 1944.

PSAP has certified to the Board that, on January 24, 2013, it posted notice of the transaction at the workplace of the employees on the affected lines, and on January 29, 2013, it served a copy of the notice on the national office of the potentially affected employees' labor union as required under 49 C.F.R. § 1150.42(e).

PSAP is seeking waiver of the 60-day labor notice requirement because, it asserts, requiring the full 60-day notice would serve no useful purpose. PSAP states that no employees of PSAP will be affected by this transaction, as PSAP and its predecessor have been the exclusive freight carriers over the Line since 1944 and would continue to be the exclusive freight carrier after the proposed transaction is consummated. According to PSAP, none of its employees will be affected by the lease agreement because PSAP would continue to provide the same service it has in the past. It will just do so as a lessee rather than as an operator. PSAP also states that it does not plan to reduce its employment workforce or hire any additional employees as a result of the transaction. No opposition to the petition has been filed.

DISCUSSION AND CONCLUSIONS

The purpose of our notice requirements at 49 C.F.R. § 1150.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation.⁴ The Board takes seriously the requirements of the rule, but it does not appear that the purpose behind the notice requirements would be thwarted if the requested waiver is granted in this case.

The record indicates that no employees would be adversely affected by a waiver of the requirements here. PSAP is currently the exclusive freight operator of the involved Line, and it will continue to operate as the exclusive freight carrier of the Line upon consummation of the

² Northern Pacific is a predecessor of PSAP.

³ See PSAP Operating Co.—Acquis. & Operation Exemption—ParkSierra Corp., FD 34200 (STB served May 23, 2002).

⁴ See Acquis. of Rail Lines Under 49 U.S.C. 10901 & 10902—Advance Notice of Proposed Transactions, 2 S.T.B. 592 (1997).

transaction. PSAP does not plan to reduce its workforce as a result of this transaction. Therefore, no employees will be adversely affected by the waiver of the 60-day notice period because the transaction merely will convert services provided pursuant to an operating agreement to services provided pursuant to a new lease agreement.

For this reason, we will grant the waiver request. Granting the request will make the exemption for the lease and operation transaction in this proceeding effective on February 28, 2013.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. PSAP's request for waiver is granted.
2. This decision is effective on its date of service.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.